

IN THE
SUPREME COURT OF THE UNITED STATES
February Term, 1977

NO.

FRANK L. SILVERMAN,
Petitioner,

76-1293

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

- - - - -

FRANK L. SILVERMAN and
ANNA SILVERMAN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

- - - - -

PETITION FOR WRIT OF CERTIORARI TO REVIEW
THE DECISION OF THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT.

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JURISDICTION

The judgment of the Court below was entered on February 10, 1977. Rehearing was not sought. The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. The denial by the Tax Court to grant petitioner's motion for a bill of particulars to clarify the statutory notice of deficiency dated June 6, 1968 and September 15, 1972 was not ruled on by the Court of Appeals, and did the failure on the part of the Court below constitute error?
2. Was the Court below in error in holding that the denial of the discovery motion prejudiced petitioner's rights in the proper preparation for trial and violated their Constitutional rights?
3. Was the Court below in error when it took out of context "the filing of the stipulations was effected in the presence of the Court" and omitted a substantial part of the record of the Tax Court?
4. Was the Court below in error in its failure to rule on the question of the Tax Court's denial to grant petitioners a mistrial on June 24, 1976?
5. Was the Court below in error in ruling that the stipulation of July 7, 1976 which was executed at the direction and dictation of the Court was proper while petitioner was ill?

9. Was the Court below in error in allowing new scheduled to supersede the Statutory Notice Schedules of June 6, 1968 and September 15, 1972, without the Court ruling on same?
10. Was the Court below in error by not ruling that the conduct of the Trial Judge in the ex-party discussions between counsel for Commissioner and the Tax Court was prejudicial to the petitioners (A-716 Lines 8-18 Record on Appeal, Statement of Case A-727, lines 3-22)?
11. Was the Court below in error in not holding that the denial of the petitioners' motion in the Tax Court Rules of Procedure, Section 161 and 162 were sufficient grounds for a reversal of said judgment?
12. Was the Court below in error by not ruling on the respondent's amended answers for the years 1961-1965 inclusive?
13. Was the Court below in error when it based its opinion on the stipulated tax liabilities for the years 1960 - 1965, wherein these alleged stipulations were secured under duress by the Tax Court?

14. Was the Court below in error when they stated that petitioners had claimed that the liabilities were higher than anticipated. This issue was not raised on the appeal by the taxpayers.

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STATEMENT OF THE CASE

During the years 1960, 1961, 1962, 1963, 1964 and 1965 petitioners were residents of the State of New York, and petitioner, Frank L. Silverman, was employed by the Workmen's Compensation Board of the State of New York, and received wages during each and every year to wit* 1960, the sum of \$8,244.85, the year 1961 the sum of \$9,725.44, for the year 1962 the sum of \$10,841.11, and for the year 1963, the sum of \$11,643.83, and for the year 1964 the sum of \$12,602.87, and for the year 1965, the sum of \$13,715.01, which amounts have been duly reported in the income tax returns for all of the aforesaid years, and the tax on said earnings were paid each and every year. That in addition to the above, petitioner conducted an office for the practice of law and general insurance.

That the income received by petitioner, Frank L. Silverman, from his employment, the receipts of funds received from the law practice and that all of the insurance premiums received from the insurance were all deposited in several banks, for proper transmission to clients and the several insurance carriers.

That all payments were made by the petitioner, Frank L. Silverman, by checks from the several banks to clients, insurance companies for clients' premiums.

The Commissioner of Internal Revenue did not make any audit prior to the serving of the Statutory Deficiency Notices upon the petitioners and the undersigned June 6, 1968 and September 15, 1972.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO REVIEW THE DECISION OF THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT:

Petitioners pray that a writ of
certiorari to review the judgment herein
of the United States Court of Appeals for
the Second Circuit entered in the above
entitled cases on February 10, 1977.

The opinion of the Court of Appeals
(Appendix A, page 46) is not yet reported.
It affirmed a judgment of the Tax Court
of July 12, 1976.

JURISDICTION

The judgment of the Court below was
entered on February 10, 1977. Rehearing was
not sought. The Jurisdiction of this Court
is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. The denial by the Tax Court to
grant petitioner's motion for a bill of par-
ticulars to clarify the statutory notice
of deficiency dated June 6, 1968 and Sept-
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of Appeals, and did the failure on the part
of the Court below constitute error?

2. Was the Court below in error
in holding that the denial of the discovery
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lated their Constitutional rights?

3. Was the Court below in error
when it took out of context "the filing of
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sence of the Court" and omitted a sub-
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4. Was the Court below in error in its failure to rule on the question of the Tax Court's denial to grant petitioners a mistrial on June 24, 1976?

5. Was the Court below in error in ruling that the stipulation of July 7, 1976 which was executed at the direction and dictation of the Court was proper while petitioner was ill?

6. Was the Court below in error in not holding that the shifting of income from taxable year 1966 to taxable year 1965 did not create any civil fraud penalty and that Papa v. Commission, 464 F. 2d 150 did not apply to the case at bar?

7. Was the Court below in error by referring to Commissioner's Exhibit 28AB and omitting any reference to petitioners' Exhibits "1-A", "A", "A-2", "B", "C", "D", "1E" and Exhibit 19-S (Pages 62-66)

8. Was the Court below in error in holding that the Statute of Limitations is tolled although the Commissioner commenced collection proceedings after the lapse of more than five years with full knowledge of all the facts?

9. Was the Court below in error in allowing new scheduled to supersede the Statutory Notice of June 6, 1968 and September 15, 1972, without the Court ruling on same?

10. Was the Court below in error by not ruling that the conduct of the Trial Judge in the ex-party discussion between counsel for Commissioner and the Tax Court was prejudicial to the petitioners (A-716 Lines 8-18 Record on Appeal) (See Statement of Case Page 23); (A727, Lines 3-22)?

11. Was the Court below in error in not holding that the denial of the petitioners' motion in the Tax Court Rules of Procedure, Section 161 and 162 were sufficient grounds for a reversal of said judgment?

12. Was the Court below in error by not ruling on the respondent's amended answers for the years 1961 - 1965 inclusive?

13. Was the Court below in error when it based its opinion on the stipulated tax liabilities for the years 1960-1965, wherein these alleged stipulations were secured under duress by the Tax Court?

-10-

14. Was the Court below in error when they stated that petitioner had claimed that "the liabilities were higher than were anticipated." This statement was not raised on the appeal by petitioners.

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STATEMENT OF THE CASE

During the years 1960, 1961, 1962, 1963, 1964 and 1965 petitioners were residents of the State of New York, and petitioner, Frank L. Silverman, was employed by the Workmen's Compensation Board of the State of New York, and received wages during each and every year to wit: 1960, the sum of \$8,244.85, the year 1961 the sum of \$9,725.44, for the year 1962 the sum of \$10,841.11, and for the year 1963, the sum of \$11,643.83, and for the year 1965 the sum of \$13,715.01, which amounts have been duly reported in the income tax returns for all of the aforesaid years, and the tax on said earnings were paid each and every year. That in addition to the above, petitioner conducted an office for the practice of law and general insurance.

That the income received by petitioner, Frank L. Silverman, from his employment, the receipts of funds received from the law practice and that all of the insurance premiums received from the insurance were all deposited in several banks, for proper transmission to clients and

the several insurance carriers.

That all payments were made by the petitioner, Frank L. Silverman, by checks from the several banks to clients, insurance companies for clients' premiums.

The Commissioner of Internal Revenue did not make any audit prior to the serving of the Statutory Deficiency Notices upon the petitioners and the undersigned June 6, 1968 and September 15, 1972.

That the Statutory Notices were based on bank deposits, and/or settled cases of petitioner Frank L. Silverman's clients.

Petitioners, in an effort to defend the deficiency notices, sought to secure a bill of particulars regarding all of the lumped sums as set forth by the respondent in his notice of deficiency.

That each time petitioners made a motion for such information before the Tax Court, the said motion was denied on the several occasions. (See pages 54-9

Finally a motion was duly made before the United States Tax Court, pursuant to Rule 71 Tax Court Rules of Practice and Procedure, which was also denied by the Court (see page).

On pages A-348 to A-352, by Hon. William H. Quealy, made the following remarks:

"Well, let me say, Mr. Silverman, that the Court is fully familiar with your position and familiar with your motions which you've filed previously in this case on several times. Your motion is again denied and if it were -- had been set properly, the Court would go ahead and enter a decision for the respondent just as the Court did in the Century case. But by reason of the fact that this was merely set on the motion and the manner in which the order was entered, the Court does feel constrained not to do so."

"However, this case is being set for trial at the calendar which commences here on December 1st; and it is the intention of the Court if you are not ready, willing and able to go to trial at that time, that a decision will be entered. It's been on every calendar, I believe, that -- it's been up here in that period of time. This is a repetition of a motion that you have. The Government has cooperated with you. Mr. Menillo has been before this Court several times and explained the information he's given to you."

Now this is the end of the road so I'm telling you now so that you can be prepared, this case will be tried December 1st. Your motion to -- for further discovery is hereby denied.

Mr. Silverman: May I be heard, Judge?

The Court: You may be heard now.

Mr. Silverman: Now, I have served papers on Mr. Menillo April 30th. He didn't have the courtesy to serve a reply within the 45 days as required by --

The Court: Mr. Silverman, you've been serving papers in this case since I think, 1968 or 1969. The files -- how many times has this case been up -- up here?

Mr. Silverman: Several times.

The Court: That's right. So we've come to the end of the line.

The Court: You've had plenty of time. There are stipulation processes. I've read the transcripts of the prior hearings. You have been furnished with all the information that the Government has that should enable you to meet your burden in this case, if you can meet it. This is a bank deposit case, right?

Mr. Silverman: No Sir, not totally.

The Court: Well --

Mr. Silverman: Judge, I'd like to call your attention to one fact. Asking a petitioner to come into Court and tell the Court a lump sum of \$3,000.00 in one bank, and a lump sum of \$8,000.00 in another

bank, and so forth and so on, without meeting the burden -- the burden petitioner. I'd like to have a breakdown of these items, Judge. I'm entitled to it. That -- for that reason --".

On January 20, 1976, this case came on by way of a motion of the respondent to compel petitioners to sign a stipulation of facts, before Honorable William H. Quealy, Judge. That said stipulation of facts were found by the Court to be incomplete, the case was continued to February 23, 1976.

That between January 20, 1976 and February 23, the respondent delivered to petitioners approximately 1,000 exhibits although prior thereto the respondent claimed that he had none to furnish to petitioners.

That this case was continued to February 24, 1976, and on said date petitioners requested an adjournment for a reasonable time in view of the fact of the vast amount of information that was given petitioners on the eve of trial.

The Court granted to petitioners an adjournment to April 1, 1976, an inadequate period of time, to prepare a case of this kind of approximately 1,000 exhibits delivered a day before trial.

That adjournment was granted by the same Judge who stated on the record that he did not want to try this case. "I don't want to try your case, frankly, because I'd be the first to admit, I'd have a hard time being patient." (A-350 page, Line 23-25)(Statement of case Pg.)

Further, the respondent not only failed to credit petitioner, Frank L. Silverman, the funds that were disbursed to his clients in cases that were settled and accounted for, but also failed to give credit of moneys that were also accounted for and were identified upon which a stipulation was entered into by respondent and petitioners; and that in addition to the above respondent attempted to offer into evidence cancelled stock certificates showing an alleged sale of

stock, but the Court below rejected such offer and were excluded from evidence, but the Court below permitted the respondent to include the proceeds of the sale of the said rejected alleged sale of the stock, which was included in the stipulation entered into July 12, 1976.

The Petitioner, Frank L. Silverman, upon regaining his equilibrium and examining the stipulation and realizing that the respondent failed to credit petitioners moneys that were paid to clients that were classified by respondent as unexplained deposits, and also moneys that explained to respondent upon which a stipulation was entered into between the petitioner and respondent to the extent of the sum of \$13,424.19 that should have been eliminated from the unexplained deposits, petitioners moved immediately by way of a motion to vacate the said stipulation and, at the same time, asked to be heard on said application before the Tax Court. The Court below denied the said application, by issuing the following order:

"Upon consideration of the documents and attachments received from petitioner, Frank L. Silverman, on July 14, 1976, which said document and attachments have been filed in each of these cases as of the date received as petitioners' motion to vacate stipulated decision, it is (see Order dated July 15, 1976 Appendix E - Pg. 55)

"ORDERED that the aforesaid motion to vacate stipulated decision filed in each of these cases on July 14, 1976, is hereby denied.

"The stipulation decision entered in each of these cases on July 14, 1976, is hereby denied.

"The stipulation decision entered in each of these cases on July 12, 1976 remains in full force and effect as of its entry date."

(Signed) William H. Quealy,
Judge.

"Dated: Washington, D.C. July 15, 1976."


It is respectfully called to the Court's attention that the respondent did not submit any papers in opposition to the petitioners' application in the Tax Court or make any denial of the petitioners' allegation in the application of July 14, 1976 in the Court below, therefore, in the light of the above, the Court below is clearly erroneous.

The issues dealing with the

statutory notices mailed to petitioners June 6, 1968 and September 15, 1972, the amended answers of the respondent, and the new schedules as submitted by agents, Wallace and Neutuch, were not dealt with in the Court below, and that constitutes error.

The Trial Court refused to grant taxpayers a hearing on the application of July 12, 1976 in violation of petitioners' constitutional rights.

The petitioners appealed the said denial to the United States Court of Appeals for the Second Circuit, which affirmed the judgment of the Tax Court.



I

REASON FOR GRANTING THE WRIT

THE DENIAL BY THE TAX COURT TO GRANT PETITIONERS' MOTION FOR A BILL OF PARTICULARS TO CLARIFY THE STATUTORY NOTICE OF DEFICIENCY OF JUNE 6, 1968 AND SEPTEMBER 15, 1972, AND NOT RULED ON BY THE COURT BELOW CONSTITUTED ERROR.

The concept of a bill of particulars has long been established as a means of clarifying the issues of claims and to apprise the party upon whom a claim is asserted to become familiar with the issues of the said claim, and to narrow the issues for the Court on said claim.

It was upon this concept that the office of a bill of particulars was established as an aid to litigants. Moise v. Burnett, 52 F. 2d 1071.

Thus the basic concept with regard to a bill of particulars was thwarted by the Tax Court and the Court below failed to rule on said issue.

The Court below in failing to rule on said issue in the case at bar resulted in prejudice to the taxpayers, and thus constituted error.

2

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW OF THE DENIAL OF THE DISCOVERY MOTION TO THE PREJUDICE OF THE TAXPAYERS.

Pursuant to the provisions of Rule 71 of the United States Tax Court Rules of Procedure, after due notice to the Commissioner for discovery, the Commissioner is obligated to furnish such information to a taxpayer in order to clarify items in the statutory notice of deficiency when same indicates aggregate sums and petitioner requests relief pursuant to said rule.

The Tax Court without any opposition on the part of the Commissioner denied taxpayers' application in a long exposition of his feelings towards taxpayers. See Order dated September 22, 1975 (Appendix D, page).

The denial of said application was tantamount to a denial of due process to the taxpayers, and left them at the mercy of the Commissioner, without an opportunity to adequately prepare for trial and meet the issues. Morgan v. U.S., 298; Morgan v. U.S., 21-22

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT THAT THE FILING OF THE STIPULATION WAS EFFECTED IN THE PRESENCE OF THE COURT BUT FAILED TO TAKE INTO CONSIDERATION ALL OF THE FACTS HEREIN.

The Tax Court knew that taxpayer was ill and unable to proceed with the trial on July 7, 1976. After extensive arguments presented to the Court, the Tax Court realized that taxpayer was ill and walked off the bench for about 15 minutes, as indicated in the minutes of the trial, as follows:

"Mr. Silverman: I didn't feel good for the past three days.

"This --

"The Court: Well, I-- I--

"Mr. Silverman: This case exhausted me.

"The Court: Settlement, I am sorry

"Mr. Silverman: I --

"The Court: I came up here on the assumption that --

Mr. Silverman: I can't talk anymore, I'm kind of dizzy now. Can I have some water, please?

"The Court: Well I tell you Mr. Silverman, that as of now you are not

prepared to proceed any further, is that right?

"Mr. Silverman: I need more time, Judge, I'm

"The Court: All right,

"Mr. Silverman: --sick, I should go to the hospital now, but I am trying to hold myself. If your honor wants me examined by a doctor, I'll submit gladly and I'll pay the bill. I'm mortally sick. I need a little time. I'm not going to collapse here. Your honor doesn't want to see me collapse.

"The Court: I -- I am afraid, Mr. Silverman, that we have gone up and down the hill on this so often that --

Mr. Silverman: No, no, I'd like to have an opportunity to present my facts to the Court --

"The Court: Well --

"Mr. Silverman: --in lieu -- another week or so or ten days wouldn't do much difference either way.

"The Court: The -- the respondent has a -- I assume that the respondent wants to check the originals of these, is that right?

"Mr. Silverman: Judge, do you mind if I sit down and talk?

"The Court: You can -- certainly, you can sit."

Later in the morning of July 7, 1976 the Court having refused an adjournment although taxpayer was ill and unable at that time to find

various exhibits because of his state of illness and dizziness, the Court then said: --

"The Court: Well, we'll recess here for about 15 minutes and give you an opportunity to get together all of the materials that you want to put in the record."

At the resumption of the trial, taxpayer was not in a state of mind to know what was going on and therefore was in no position to examine any records or amounts, as put in the stipulations.

"Mr. Silverman: --because I feel if I continue on I wouldn't last the length of this trial."

That in light of the above, it is respectfully submitted that under such circumstances the statement of the Court below that the stipulation was effected in the presence of the Court was taken out of context and constitutes error.

4

CERTIORARI SHOULD BE GRANTED TO REVIEW THE FAILURE OF THE COURT BELOW TO RULE ON THE DENIAL OF THE COURT TO GRANT PETITIONERS A MISTRIAL ON JUNE 24, 1976.

The Tax Court on June 24, 1976 devoted most of the morning session to have the taxpayer sign a stipulation of consent of liabilities.

The taxpayer refused to do so.

5

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW THAT THE TAX COURT'S DENIAL OF MOTION TO VACATE THE STIPULATION OF JULY 7, 1976 WHILE TAXPAYER WAS ILL, AND THAT SAID STIPULATION WAS SECURED UNDER DURESS.

The record is abundantly clear therefore that the taxpayer was ill on July 7, 1976 and was in no position to know the nature of his act, a fact which was well known to the Tax Court.

The petitioner could find no authority where a stipulation executed under these circumstances would not warrant the relief sought herein.

The cases cited by the Court below are inapplicable to the case at bar:

Krueger v. Commissioner, 45 T.C.
823, 832 (1967)

Stanley v. Commissioner, 48 T.C.
555 (1966)

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW IN ITS FAILURE TO RULE ON THE TRANSFERRING TO INCOME FROM TAXABLE YEAR 1966 TO TAXABLE YEAR 1965, AND CITING PAPA V. COMMISSIONER, 464 F. 2d 150, A CASE WHICH HAS NO APPLICABILITY TO THE CASE AT BAR.

The case of Papa dealt with the taxpayer having two sets of books in connection with his business, which has no relevancy to the case at bar. In the case at bar the taxpayer reported income that became available to him in 1966, but the Commissioner transferred to the 1965 tax return a substantial capital profit which only became available in 1966, thus creating a large underpayment for 1965, and upon which a 50% penalty was imposed on the taxpayer. It is submitted that it is inconceivable, unjust and intolerable to hold petitioners liable for such tax liability, but that would be the effect should the decision be allowed to stand.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW OF REFERRING TO THE RESPONDENT'S SCHEDULE 28AB AND NOT CONSIDERING TAXPAYERS' SCHEDULES "1A", "A", "1", "A-2", "B", "C", "D", "1E" AND EXHIBITS 19-S (Page 56-61)

An examination of both schedules would show that the taxpayers were not given credit for payments made to clients in connection with settled cases.

The Commissioner charged as "unexplained deposits" total amounts of recoveries from settled cases, without giving proper credit to taxpayer for having paid out substantial shares to clients, and to which clients were entitled.

It is respectfully submitted that it is incorrect and unjust to hold petitioner accountable for funds that just passed through his bank accounts for clients that he pay the tax thereon. It is inconceivable that petitioner should be charged tax on such funds, yet that would be the effect should the decision of the Court below be allowed to stand.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW THAT THE STATUTE OF LIMITATIONS IS TOLLED ALTHOUGH THE COMMISSIONER COMMENCED COLLECTION PROCEEDINGS AFTER THE LAPSE OF MORE THAN FIVE YEARS, WITH FULL KNOWLEDGE OF ALL THE FACTS.

The notices of deficiencies were mailed by the Commissioner on June 6, 1968 and September 15, 1972, after a lapse of more than five years, although he had full knowledge of all of the facts herein since August 4, 1967, which is in excess of the Statutory period.

It would be of national significance for a clear determination of said issue, whether the three year Statute is applicable, or, as claimed by the Court below, that the statute is tolled and no time limit is applicable.

It is taxpayers' contention that if the ruling of the Court below is as found then said Statute would be unconstitutional.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW THAT THE SCHEDULES SUBMITTED BY THE COMMISSIONER SUPERSEDING THE SCHEDULES OF THE DEFICIENCIES NOTICES OF JUNE 6, 1968 AND SEPTEMBER 15, 1972, WITHOUT A RULING ON SAME.

The Tax Court allowed and permitted the Commissioner to introduce new schedules to supersede the schedules of the Statutory Notices over the objection of the taxpayers.

Agent Wallace testified as follows:

"Mr. Wallace you had occasion to prepare schedule for the Court in connection with my returns?

Yes.

You--you prepared those schedules together with Nr. Howard--Neutuch?

Yes.

And would you tell the Court how you received that information or where -- did you go back to the original assessment or notice of deficiency dated 6/6/68-September 15, 1972?

We reviewed those--that petition and we took the documents from

Mr. Brodsky and Mr. Kletnick, they provided us which had been exhibits in a prior case.

You did not make your schedule fresh and new, independent of the other, did you?

We made it in--we use it as our-- basis and then we worked from there.

But you didn't use any part of this? Any part of those schedules? Originally mailed to me by the Revenue Office on September 18, 1972?

Yes, we did. Because we had--some of the schedules we used, we made revisions in them but they were the schedules which were entered before.

Did you and I have a conversation in Mr. Brodsky's office one time several months ago, several weeks ago? Didn't you tell me that your schedule was new, you started from scratch?

We--

Didn't you tell me that?

Not completely no.

Not completely. What did you tell me?

Okay, we used--we--most of our schedules, we started and made them and then compared them with the prior schedules, you know so didn't -- to know which was --and made any revision on the old schedule which we had--

Didn't you tell me that those schedules you submitted were

entirely new and different from the ones that were already inserted on me -- or mailed to me?

The Bank deposit is -- the -- our analysis of the bank accounts is new. But the dividend schedule, the Schedule D schedule were prepared prior.

How about the major unexplained deposits, was that new too?

The unexplained deposit schedules were new.

A reading of the minutes of the transcript of the record clearly indicates the Commissioner used new schedules other than those set forth in the deficiency notices above referred to in the Tax Court, and the Court below failed to Rule on said issue.

It would be of great national interest and importance to secure a ruling by this Court as to whether the Commissioner can mail a notice of deficiency with one set of schedule and on the trial in the Tax Court use another and entirely different set of schedules and without moving before the said Tax Court for leave to amend his pleadings to his proof. The Court below failed to make such ruling, though the issue was presented, by the

taxpayers.

It would be of great interest and importance to secure a ruling by this Court of this question.

CERTIORARI SHOULD BE GRANTED
TO REVIEW THE FAILURE OF THE
COURT BELOW TO RULE ON THE
EX-PARTY DISCUSSIONS BETWEEN
THE TRIAL JUDGE AND COUNSEL
FOR THE COMMISSIONER IN THE
ABSENCE OF THE TAXPAYER.

The Tax Court and counsel for the Commissioner during Court recess conveyed to the Tax Court certain remarks without the taxpayer being present to defend said remarks, by the Court:

"If I were in the position of the respondent after some of the statements you made in Court -- at recesses that they weren't going to collect any money, I'd put an end to this stalling by levying a jeopardy for the amount we've got--we know you owe."
(Transcript minutes Page A-716, lines 8-13)(Statement of fact Page 22-24).

The taxpayers were not afforded an opportunity to make reply to respondent's ex-party statements before the

said Judge.

That in addition to the above the same Judge prior to the trial of these cases expressed his feeling with regard to the taxpayers. See Page

That under such circumstances how can a taxpayer secure a fair and impartial trial under such conditions and atmosphere.

That under such circumstances how can a taxpayer be accorded "due process", with a degree of fairness.
Re: Wright 282 F. Supp. 999

The same Judge who made a public pronouncement that he would not sit on these cases as a Judge, also denied the taxpayers' motion for discovery, in violation of the taxpayers' constitutional rights under the "Due Process Clause" of the Fifth Amendment to the Constitution. See Morgan v. U.S., 298 U.S. 468-478; Morgan v. U.S., 1 pages 21-22.

The placing petitioners on an undue burden of proof is in fact a denial of due process.

The Tax Court denial for the discovery motion placed petitioners in a position of not being able to meet the issues in these cases and thus a denial of "due process".

As was stated by the Court, the right to a full hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party to meet them and are entitled to be fairly advised of what the Government proposes and be heard upon the issues.

No such reasonable opportunity was accorded petitioners' in these cases in the Tax Court and the Court below failed to rule on same.

The failure to grant petitioners a reasonable adjournment when the respondent's attorneys on the eve of trial delivered to petitioners

in excess of 1000 exhibits and documents constituted a denial of due process to the petitioners, in violation of the petitioners' constitutional rights.

Further, the Court below overlooked the fact that the trial Judge realized the taxpayer's illness July 7, 1976, see minutes of trial of July 7, 1976, by the

"The Court: Well, I'll tell you Mr. Silverman, that as of now, you are not prepared to proceed any further, is that right?"

11

CERTIORARI SHOULD BE GRANTED
TO REVIEW THE FAILURE OF THE
COURT BELOW TO REVERSE THE
DENIAL OF TAXPAYERS' MOTION
OF JULY 12, 1976

Taxpayers made a motion pursuant to Rule 161 and 162 of the United States Tax Court Rules of Procedure, upon learning that the Commissioner failed to credit the taxpayers with funds that were disbursed to taxpayer's clients that was due them.

Schedule of such payments

were attached to said motion papers, also credits of unexplained deposits were eliminated by another stipulation that was submitted by the respondent and same was accepted by the Court, which deposits as eliminated and the clients funds were not credited to the taxpayers.

The Tax Court denies said motion, though no opposition or contrary statements were submitted by the respondent to petitioners' motion.

The denial of petitioners' motion of July 12, 1976, under such circumstances constitutes a denial of justice and such denial is in violation of the Due Process Clause of the Constitution.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE FAILURE OF THE COURT BELOW TO RULE ON THE QUESTION OF THE AMENDED PLEADINGS OF THE RESPONDENT.

The respondent in his answer to taxpayers' petitions claimed taxes due for the years, to wit:

1961-\$4506.93	
in the stipulation	\$18,654.07
1962 \$7771.37	
in the stipulation	14,468.00
1963 \$4732.61	
in the stipulation	6,819.82
1964 \$3736.48	
in the stipulation	8,427.47
1965 \$8606.43	
in the stipulation	<u>12,480.22</u>
Total	
\$29,353.82	\$60,849.58

The schedules presented to taxpayers July 7, 1976, the amounts were in excess of those amounts as set forth in the respondent's pleadings on file with the Tax Court, a fact that was known to said Court.

The taxpayer because of his illness did not compare the amounts presented to him and those amounts as set forth in respondent's answer

to the taxpayers' petition.

It is elementary that a litigant is bound by his pleadings, and the respondent is no exception to said rule.

Moise v. Burnett, 52 F. 2d 1071.

13

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW THAT THE STIPULATION OF JULY 7, 1976 WAS SECURED BY THE COURT UNDER DURESS.

In the light of all the facts and circumstances and an examination of the entire record makes it abundantly clear that the taxpayer being in a state of shock was not aware of the significance of the stipulation as presented to him in Court. See Rubenstein v. Rubenstein, 20 N.J. 359.

"No legal consequences should attach to an involuntary act?

As stated by the Court in that case:-

"That consent is the very essence of a contract, if there is no actual consent there is no contract. Duress in its more extended sense means that the degree of constrained danger actual or threatened and impending such as in fact works to control the will.

Because of the analytical and factual similarity and factual concept between the concept of duress as used in the law of contracts and rule on non-liability an involuntary act locally in this case, the New York Rule should apply. (5 Williston on Contracts - 1605).

14

CERTIORARI SHOULD BE GRANTED THE PETITIONERS TO REVIEW THE HOLDING OF THE COURT BELOW OF THE HOLDING THAT THE LIABILITIES WERE HIGHER THAN ANTICIPATED, A POINT NOT RAISED BY THE TAXPAYER THE COURT BELOW FAILED TO RULE ON THE 50% PENALTY ON THE 1960 TAX LIABILITY AND ALSO FAILED TO RULE ON THE TRANSFER OF INCOME FROM TAXABLE YEAR 1966 TO TAXABLE YEAR 1965 AND THE IMPOSITION OF A 50% PENALTY ON SUCH TRANSFER.

It is respectfully submitted that the Government failed to accord taxpayers equity and fair consideration in these cases.

The Court below in affirming

Tax Court's decision failed to take into consideration of all of the facts and circumstances that took place in the Tax Court to the detriment of the taxpayers and thus denied justice and fair play to the taxpayers.

It is respectfully submitted that this Court should grant certiorari to review the holding of the Tax Court and the Court below and to determine whether the Tax Court's denial of the motion for bills of particulars, discovery motion and the motion to point out to the Court of credits that were not given petitioners to which they were entitled to under the applicable provisions of the United States Constitution and the said petitioners' rights were violated thereby.

January 12, 1977 the Commissioner and/or his agents,

filed a tax lien on the taxpayers' residence, just 12 days before the argument of the appeal of the United States Court of Appeals. Now the said Commissioner and/or his agents have threatened to take possession of the home and residence of the taxpayers, whose ages are Frank L. Silverman, over 70 years, Anna Silverman, 69.

It is respectfully requested that this Court issue an order restraining the Commissioner, his agents, servants and others under his charge, from proceeding in any manner to disturb the petitioners from their dwelling and residence, pending the determination of this application and for such other and further relief as to the Court may seem just and proper in the premises.

CONCLUSION:

In conclusion, the decision of the Court below should be reversed because of the following:

- (a) The failure of the Court below to rule on the Bill of Particulars issue;
- (b) The failure of the Court below to rule the denial of petitioners' application for discovery pursuant to Rule 71 of the Tax Court Rules of Procedure;
- (c) The failure of the Court below to rule the Commissioner's transfer of funds from taxable year 1966 to taxable year 1965;
- (d) The failure of the Court below to rule whether the Commissioner had the right to use new schedules in place of the schedules of the deficiency notices;
- (e) The failure of the Court below to rule on the Tax Court's dictated stipulation of July 7, 1976;
- (f) The failure of the Court below to rule the denial of the petitioners'

motion before the Tax Court pursuant to Rule 161 and 162 of the Tax Court Rules of Procedure;

- (g) The failure of the Court below to rule on whether the Tax Court was bound by amended pleadings with respect to the amount set forth therein;

The case is one of extreme importance in the light of the many issues involved, and the decision below, if not reversed will result in improper, unjust decisions in other cases and prevent a uniform application of law to each.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANK L. SILVERMAN
Attorney for Petitioner
and Pro Se
Office & P. O. Address
258 Broadway
New York, N.Y. 10007
(212) 267-2760

43A

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK)SS.:

FRANK L.SILVERMAN, being duly sworn, deposes and says; that I am over the age of twenty-one years old and reside in the City and State of New York.

That on the 10th day of March, 1977, I mailed a copy of the foregoing application on the Respondent by mailing same in a sealed envelope, with postage prepaid, properly addressed as follows:

Solicitor General of the United
States of America
Department of Justice
Tax Division
Washington, D.C.20530

Sworn to before me this
10th day of March, 1977.

FRANK L.SILVERMAN

VINCENT J. DIAMANTAKIS
Notary Public, State of New York
No. 24-0070370 Qual. in Kings Co.
Commission Expires March 20, 1978

CONSTITUTION PROVISION

The Fifth Amendment, United States Constitution, guarantees the right of a citizen to a full and fair hearing not only the right to present evidence but also a reasonable opportunity to know the claim of the opposing party to meet them and as such is entitled to be fairly advised what the government proposes and to be heard upon the issues

No such reasonable opportunity was accorded to the taxpayer in these case; such as the denial of the granting of a bill of particulars and/or the denial of the granting of the discovery motion, thus placing the taxpayer an undue burden of proof in these cases.

The denial of the Tax Court to grant a hearing on the application of July 12, 1976, was a denial of "Due Process" under the Constitution, to the taxpayers in these case.

The Court below affirmed said denial of taxpayers' constitutional rights in these cases, as if no such provision was in being.

Rules of Practice and Procedure, United States Tax Court (January 1, 1974):
Rule 71. 45
Rule 161. 45
Rule 162. 45

RULE 71. INTERROGATORIES

(a) Availability: Any part may, without leave of Court, serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by and officer or agent who shall furnish such information as is available to the party.

(b) Answers: All answers shall be made in good faith and as completely as the answering party's information shall permit. However, the answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer, unless he states that he has made reasonable inquiry and that information known to him to answer the substance of the interrogatory.

RULE 161: MOTION TO VACATE OR REVISE DECISION

Any motion for reconsideration of an opinion or findings of fact, with or without a new or further trial, shall be filed within 30 days after the opinion has been served, unless the Court shall otherwise permit

RULE 162: MOTION TO VACATE OR REVISE DECISION

Any motion to vacate or revise a decision a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Special Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the tenth day of February, one thousand nine hundred and seventy-seven.

Present:

Hon. Robert F. Anderson,
Hon. James L. Oakes,
Hon. Murray I. Gurfein,
Circuit Judges.

- - - - -
FRANK L. SILVERMAN,
Appellant,
v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

76-4195

Frank L. Silverman and
Anna Silverman,
Appellants,
v.

Commissioner of Internal Revenue,
Appellee.

- - - - -
Appeal from decisions of the
United States Tax Court of July 12,
1976.

The decision below relative to the taxable years 1960-65 were based on the stipulated tax liabilities for those years. The denial of appellant's motions for further discovery and of his

last motion for an additional continuance, all made prior to the entry of the stipulations, were therefore mooted. His subsequent motion to vacate the decisions and set aside the stipulations on the grounds that they were entered into while he was in a state of collapse, that the liabilities were higher than he had anticipated and that he had not been given credit for payments to clients reflected by his "judicial closing statements" was properly denied. The filing of the stipulations was effected in the court's presence. Our examination of the record indicates no showing of duress. See Krueger v Commissioner, 48 T.C. 824, 832 (1967); Stanley v Commissioner, 45 T.C. 555 (1966).

The taxpayer's principal claim is that the Commissioner did not credit him with certain amounts paid by him to clients. All amounts reflected by the taxpayer's own "judicial closing statements," however, were treated by the Commissioner as explained deposits and were not reflected as income. As to taxable year 1960, regarding which taxpayer did not produce any judicial closing statements, he was ultimately credited with \$29,325.44 (See Exhibit 28AB). Absent this generosity by the Commissioner, the taxpayer's income tax liability of \$5,874.20 would have been much greater.

Other grounds asserted for reversal by the taxpayer are similarly without merit: the fact that different amounts from those involved here were claimed in the indictments charging criminal tax evasion is immaterial since in a criminal case it is not necessary to prove the full amount of under-reported income even while it is necessary to prove willful evasion. See 10 J. Mertens, The Law of Federal Income Taxation Sec. 55.18 at 104-06 (rev. ed. J. Doheny 1976).

The civil fraud penalty, 26 U.S.C. Sec. 6653, is applicable to an entire deficiency in any given year, not merely to individual items. Papa v Commissioner, 464 F.2d 150 (2d Cir. 1972). The statute of limitations is tolled in cases of a false or fraudulent return or a willful attempt to evade, and here taxpayer was convicted of criminal fraud. See 26 U.S.C. Sec. 6501(c)(1)(2); Lowy v. Commissioner, 288 F.2d 517 (2d Cir. 1961) (L. Hand, J.), cert. denied, 368 U.S. 984 (1962).

Taxpayer's other contentions are without merit.

Judgment affirmed.

ROBERT P. ANDERSON

JAMES L. OAKES

MURRAY I. GURFEIN, Circuit Judges

APPENDIX B

UNITED STATES TAX COURT
Washington, D.C.

FRANK L. SILVERMAN,)	
)	
Petitioner,)	Docket No.
)	3506-68
v.)	
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
)	
Respondent)	

O R D E R

This case was called from the calendar for motions sessions on April 1, 1973, at Washington, D.C. for hearing on petitioner's motion for further and better statement in answer and amendment to answer and to strike filed March 12, 1973. No appearance was made by or on behalf of the petitioner. However, petitioner's memorandum of law filed March 28, 1973 was before the Court. The motion was argued by counsel for respondent. After due consideration, and for cause appearing in the transcript of the proceedings this date, it is

ORDERED, that the petitioner's motion dated March 12, 1973, is denied.

(Signed) Bruce M. Forrester

Judge

Dated:
Washington, D.C.
April 11, 1973

APPENDIX "C"

UNITED STATES TAX COURT
WASHINGTON

FRANK L.SILVERMAN ET AL.,)	
Petitioner,)	
)	Docket Nos.
v.)	9003-72
)	9004-72
COMMISSICNER OF INTERNAL REVENUE,)	
Respondent.)	

O R D E R

These cases came on at the Motion Session at Washington, D.C., on September 12, 1973, for hearing, in each case, on petitioners' motion for a bill of particulars filed on July 31, 1973, and on respondent's motion for leave to file amendment to answer out of time, filed on August 28, 1973. Petitioner Frank Silverman, and counsel for respondent appeared and argued their motions, and Mr. Silverman also filed at the hearing a written statement in support of petitioners' motion. Respondent's motions for leave were granted, and petitioners' motions were taken under advisement to permit the Court to give consideration to Mr. Silverman's written statement.

When petitioners' motions for a bill of particulars were filed, the Court issued its usual notices calendaring such motions for hearing on September 12, and also stating that if the respondent filed proper amended pleadings in accordance with Rule 27(a) (3) of the Court's Rules of Practice, the motion would be denied without hearing and without prejudice to the right of petitioners to move, or otherwise to respond with respect to the amended pleadings.

On August 28, the respondent filed his above mentioned motions for leave to file

amendments to his answer, which were due on August 27, out of time; and he alleged therein that the amendments had been timely received in the National Office of the Internal Revenue Service, but "thorough inadvertence" were not filed on the due date of August 27.

The amendments to the answers, attached to the motion for leave, were lodged.

At the hearings of September 12, it appearing to the Court that petitioners had not been prejudiced by the one-day delay and without objection on the part of Mr. Silverman, the Court, as stated, granted the respondent's motion for leave, and directed that the accompanying amendments to answers be filed.

These cases embrace the years 1961 and 1962 (Docket No. 9003-72), and 1963 through 1965 (Docket No. 9004-72). In each case, the respondent made three adjustments (among others) for each of the years involved, which were the subject of petitioners' motions for bill of particulars: Increase in income from (1) unexplained bank deposits, (2) dividends, and (3) capital gains. An examination of respondent's amendment to answer in each case, clearly establishes that the information sought in the bill of particulars has been furnished, with respect to the dividends and capital gains. That leaves for consideration the information sought in the motions for bill of particulars and that furnished in the amendments to answers, with respect to the unexplained bank deposits.

Paragraphs (a) and (b) of petitioner's motion in Docket No. 9003-72, dealing with 1961, are typical of petitioners' requests for information regarding unexplained deposits. These paragraphs are, as follows:

(a). A complete list of the unexplained deposits for the taxable year ending December 31, 1961, in the sum of \$21,972.11, particularly the name or names of bank or banks or any other depository, and the account number, if any, in which the alleged unexplained deposits were made.

(b). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1961.

Turning to respondent's amendment to answer in Docket No. 9003-72, the following information supplied with respect to accounts in the Merchants Bank of New York is typical of that supplied for bank and brokerage houses.

Analysis of Deposits Merchants Bank of New York			
Source	Regular-Spec.	Reg.	Total
1961			
Total Deposits	\$23,847.32	\$6,271.03	\$30118.35
Eliminations			
Professional Receipts	\$8,153.99	\$ 1,125.00	9278.99
Dividends	1,950.34	1,548.75	3499.09
Stock Brokers	5,488.20		5488.20
	\$15,592.53	2,673.75	18266.28
Total			
Unidentified Deposits	\$8,254.79	\$3,597.28	\$11852.07

In our opinion, the foregoing typical information, furnished by respondent in his amendment to answer, is adequate for the pleadings in these cases. The details of the dates and composition of the myriad of deposits going to make up the total of deposits, and the dates for the deposits embraced in the eliminations, are matters of evidence and have no place in the pleadings. The burden is on the petitioners to establish

from their records any further eliminations from the deposits which they believe are non-income items. In the process of stipulating facts in these cases, as the parties are required to do by Rule 31 of the Court's Rules of practice, the Court will expect counsel for the respondent to show to petitioners any details concerning the deposits if the petitioners, who should have among their own records such information, do not have the same.

Premises considered, it is accordingly

ORDERED that petitioner's motion for bill of particulars, in each of these cases, be and the same is hereby denied.

(Signed) RANDOLPH F. CALDWELL, Jr.
Commissioner

Dated: Washington, D.C.
September 17, 1973.

UNITED STATES TAX COURT
Washington.

FRANK L. SILVERMAN, ET AL)	
)	
Petitioner,)	3506-68
)	9003-72
v.)	Docket No. 9004-72
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

These cases were called at New York, New York, on September 22, 1975, for a hearing on motion by petitioners for an order directing the respondent to serve and file the answers demanded of said Commissioner by the petitioners herein filed June 19, 1975, and set for hearing at this time by the Court's order dated June 25, 1975. Frank L. Silverman appeared for petitioners to argue on behalf of the motion for an order. After due consideration of the Court's record in these cases and for cause appearing in the transcript of the proceedings, it is

ORDERED that petitioners' motion for an order filed June 19, 1975, is hereby denied.

(Signed) William H. Quealy
Judge

Dated: New York, New York,
September 22, 1975.

UNITED STATES TAX COURT
Washington, D.C. 20217

FRANK L.SILVERMAN,ET AL.
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE
Respondent.

)
)
)
) Docket No.
) 3506-68
) 9003-72
) 9004-72
)
)

O R D E R

Upon consideration of the document and attachments received from petitioner Frank L. Silverman on July 14, 1976, which said document and attachments have been filed in each of these cases as of the date received as petitioners' motion to vacate stipulated decision, it is

ORDERED that the aforesaid motion to vacate stipulated decision filed in each of these cases July 14, 1976 is hereby denied.

The stipulated decision entered in each of these cases on July 12, 1976 remains in full force and effect as of its entry date.

(Signed) William H. Queely

Judge.

Dated: Washington, D.C.
July 15, 1976

RE:FRANK L.SILVERMAN-Professional
Income for year 1960-Deposits
Regular account-Merchants Bank of N.Y.

Name of case	Gross Receipts	Disbursements	Net
Grossman v Bartolo	\$1096.00	\$ 61.00	\$ 537.00
Brill v Goldberg etal	800.00	24.00	376.00
Finkenthal v Reserve Holding	350.00	13.00	162.00
Friedlan v 274 E.7th St.	500.00	24.00	226.00
Vargas v Hartwalt Realty	500.00	13.00	237.00
Sigmund v Klein	300.00	25.00	137.50
Haber v E.Arden etal	200.00	12.00	88.00
Dallaste v Boryk	500.00	25.00	200.00
Bingham v Struth	250.00	25.00	100.00
Livanis v Vernon Cab.	300.00		125.00
Campaign Contributions	250.00		
Refunds	341.00		
Piela v C.of N.Y.	950.00	60.00	415.00
Serrano v Block	400.00	25.00	175.00
Finkenthal v Esport Realty	350.00	14.00	161.00
B.Nager v Dalsi, Inc.	500.00	25.00	225.00
Schackner v Dalsi, Inc.	1382.75	73.00	518.00
Maaack v Metalviv Realty	500.00	25.00	225.00
Propochuk v C.of N.Y.	250.00	15.00	100.00
Two Cases settled	1400.00	50.00	650.00
Kabrilis v Nerna Cab.	500.00	55.00	195.00
Friedland v Rensiew	350.00	15.00	160.00
Savings Account trans(E.R.Bk)	200.00		
Gomez v Sabron Realty	350.00	17.00	158.00
Repayment of part mortg.	364.38		
Bank Loan(Merchants Bank)	2990.56		
Dividend Deposits	1420.35		
Total Deposits 1960	\$17294.54	\$621.00	\$ 5170.87
<u>Special Account</u>			
Savings account check	1000.00	F.Savakina-refundEscrow-	500.00
Exchanged checks	603.90	T.Cooper"	500.00
Insurance Funds Collected	844.00	N.Abbaj	950.00
Miscellaneous Funds	585.00	W.Jones	1150.00
Miscellaneous Ins.Prem.	1189.75	H.Weiss	140.00
Motor Ins.& Kuzman, etc.	97.00	J.Venturella	593.45
Gen.Fire & Liberty Ins.Co.	155.64	State Pay(F.L.S.)	490.12
Total	\$4475.29	Caire N.Y.Agency Corp.	656.16
Carry Forward above	17294.54	Refunds Ins.Premiums	33.49
Sum Total in Regular account	\$21,769.83	Hecker & Gitomer	130.00
For year 1960, Merchants Bank of N.Y.		N.Y.Assigned Risk, etc	125.00
			\$5064.34
		Dividends	2444.10
		Loan	2920.56
		Total Special Account	\$10499.00
		State Pay(Wage)	8244.85

Exhibit 1-A

RE: FRANK L.SILVERMAN-Professional
Income-for year 1961

Name of Case	Gross Receipts	Disbursements	Net
Vaszlavik v Weiden etal.	500.00	\$ 15.00	242.50
Cuozzi v Esport Realty	325.00	25.00	150.00
Martellara v 336 Associates	350.00	82.99	11.52
Gomez v Sabron Realty Qorp	350.00	26.00	152.00
Diller v 1280-A Sheridan	400.00	21.00	179.00
Trela v Kiely etal.	7500.00	900.00 K&G.	1575.00
(See Closing Statement)			
Skinner v N.Y.C.Transit	150.00	20.00	55.00
Hadzinsky v Ave,B & E'B'way	12500.00	1200.00	1734.00
(See Closing Statement)			
Bonet v Mets & Fierman	1100.00	21.00	379.00
Kaufman v 274 E.7th St.	450.00	27.00	198.00
Davidson v Feingold	450.00	21.85	203.15
Gelbert v 182 Second Corp.	500.00	10.00	215.00
Seeman v Sini Holding Corp.	425.00	17.00	233.00
Cohen v Atlas Barber School	500.00	32.50	192.50
Matracht v 1082-90 EasternPk.	500.00	15.00	210.00
Blyan v Pearlmax Realty	1000.00	25.00	235.00
Finkenthal v Italia Soc.	225.00	17.00	475.00
Klein v Dry Dock Savings	250.00	25.00	92.00
Eisenstein v I.E.Holding Corp.	685.00	46.50	100.00
Bingham v Roman	250.00	10.00	295.00
Zucker v Celtic Service	250.00	50.00	111.00
Kornblau v Parade Dress	300.00	75.00	100.00
Drelinger v M.Silverman	1000.00	10.00	425.00
Friedland v Velen Operating	400.00	116.50	190.00
Eng v Rubin Equities	2500.00		683.60
Total Receipts and Deposits	\$31060.00	\$ 743.84	\$841.67
Regular Special Account 1961		Less 743.84	Net \$7697.83

Regular Account deposited:
Insurance premiums 1961 1110.80
Funds Exchanged-1961 248.66
Totstick v Hartford Ins. 600.00
E.Silverman-Life Ins.Col. 1000.00
Dividend deposits 1548.75
Checks exchanged 468.65
Professional Receipts 1125.00
Total \$6101.86
Deposits in regular
Account 1961 Merchants Bank of N.Y.

Respectfully submitted

FRANK L.SILVERMAN

Exhibit "A"

RE: FRANK L.SILVERMAN-Professional
Income for year 1962

Name of Case	Gross Receipts		
Boruta v Medina	\$ 500.00	\$ 48.00	\$ 202.00
Budawick v Rosenwasser	350.00	40.00	135.00
Bomser v Surface Transit	1250.00	21.00	417.34
Zeman v NYC Transit	500.00	10.00	240.00
Tirado v Nu-Land Ass., Inc.	3250.00	86.00	1387.50
Samons v Rosenberg & Greenman	500.00	15.00	235.00
Adams v 274 E.7th St.Corp.	300.00	13.00	137.00
Sochis v NYC.Transit	500.00	28.00	228.00
Lasky v Scharf	375.00	20.00	167.50
Cuozzi v Weiss	375.00	26.00	161.50
Torres v Castiloo	1500.00	85.00	665.00
Mostofsky v City of N.Y.	1500.00	128.00	648.60
Kallao v McCary etal	16000.00	1373.85	3658.25
Cooperberg v Hockweiss	325.00	25.00	113.12
Blyan v Pearlmax Realty	400.00	12.50	187.50
Haber v Haber Realty Corp.	500.00	12.00	238.00
Total Gross Receipts.....	\$28125.00*	\$1944.35	\$6819.31
Received Insurance Premiums	\$ 475.00		
Made loan and deposited	1990.42		
Exchanges(Re:Sorell)	1000.00		
Bank Trasnfer	900.00		
Exchanges(Sorell)	496.38		
Escrow deposit(Sorrell)	500.00		
Total.	\$5361.80		
N.Y.State pay(Wages)	10841.11		
Grand Total	\$16202.91**		

Recapitulation:
Total deposits clients. . . \$28,125.00*
Miscellaneous deposits . . 16,202.91**
Total deposits \$44,327.91

Dividends deposited 1962. . . 3,303.00
All deposits. \$47,630.91

Respectfully submitted

FRANK L.SILVERMAN
For Year 1962

Exhibit "B"

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RE: FRANK L.SILVERMAN-Professional
Income for year 1963

Name of Case	Gross Receipts	Disbursements	Net
Gold v Ventura	\$ 500.00	\$ 21.50	\$228.50
Kayne v Wooten	4000.00	99.35	1550.65
Saporita v Dorishook	801.00	51.00	317.50
Grumet v City of N.Y.ETAL	1750.00	40.00	779.12
Matracht v Federation Assn	450.00	30.00	220.00
Enculescu v Josen Realty	1800.00	55.00	820.00
Konetsky v Lowenthal	1000.00	25.00	475.00
Matracht v 1082-90E.P'K	500.00	20.00	230.00
Pirkenfeld v Klerfein etall	1250.00	10.00	590.00
Drellich v Lestz	700.00	30.00	320.00
Friedland v Objzerwitz	287.00	36.00	125.00
Bass v Klein's on Sq.	700.00	15.00	335.00
Seltzer v Esport Realty	368.50	44.50	152.50
De Luca v 1280 SheridanAve	1000.00	25.00	475.00
Castro v Reisfeld etal.	3197.00	197.00	895.00
Katz v N.Y.C.T.Authority	150.00	14.00	62.00
Sanchez v Canter	750.00	39.00	336.00
Piela v Rhe City of N.Y.	900.00	47.00	403.00
Benley v Horn&Hardart Co.	500.00	35.00	215.00
Katz v N.Y.C.T.Authority	200.00	19.00	61.00
Seeman v Kellner	200.00	charged full	200.00
Total clients receipts. .	\$2003.50	\$ 831.85	\$8791.21
			900.00
Less Gold case- \$ 500.00			\$7891.21
Less Seeman case 400.00		Less disburse	831.85
\$900.00			\$7059.36
Insurance Premiums deposited	\$ 1332.03		
" " " "	58.80		
Exchanges(M.Schaeffer) "	290.60		
N.Y.State Pay(wages) "	11643.83		
Dividends deposited "	3953.50		
Sales of stock "	8012.50		
Total	\$25290.26		
Received return of capital	3500.00**		
Recapitulation:			
Deposit of clients funds....	\$20,003.50		
Miscellaneous funds depos.	25,290.26		
Total "eposits.	\$45,293.76		
	5,500.00**		
Total deposits for year 1963, Merchants Bank	\$48,793.76		

Respectfully submitted

FRANK L.SILVERMAN
Year 1963

Exhibit "C"

-60-

RE: FRANK L.SILVERMAN-Professional
Income for year 1964

Name of Case	Gross Receipts	Disbursements	Net
Kogan v Kayland Properties	\$ 150.00	\$ 25.00	\$ 50.00
Prince v City of New York	475.00	33.00	204.50
Kayne v Waxman	1500.00	36.52	563.48
Lvovsky v The City of N.Y.	500.00	50.00	150.00
Gambino v Solira Service Corp.	350.00	25.00	108.00
Drelinger V Roberta Service Co.	250.00	25.00	100.00
Richman v N.Y.C.T.Authority	150.00	20.00	55.00
Turk v The Candy Rock, Inc.	300.00	28.00	122.00
Siegel v 26 Willet St.Realty	300.00	28.00	90.00
Wien v Ave.B & E.B'way Transit	200.00	10.00	90.00
Total clients deposits. . . .	\$4175.00	\$262.52	1532.98

Case no record of are as follows:

Kogan v Kayland Properties	\$ 150.00
Cohen v Blue Rose Realty Corp.	200.00
Drellich v Public Service Corp.	300.00
Bass v Lapidus	125.00
Eochner v Longo	350.00
Flax v N.Y.C.H.A. etal	795.00
Total unaccounted cases	\$1920.00

N.Y.State Pay(wages)	\$ 12602.87
Insurance Premiums Clients	1690.23
Dividends deposited	4648.75
Exchanged for cash(S.Sherman)	45.00
Sale of stock	2063.50
Total deposits	\$21593.28

Recapitulation:

Clients funds deposited	\$4175.00
Miscellaneous deposits	21593.28
Total deposits Merchants Bank	\$25,768.28

Respectfully submitted

FRANK L.SILVERMAN
Year 1964

Exhibit "D"

RE: FRANK L.SILVERMAN-Professional
Income for year 1965

Name of Case	Gross Receipts	Disbursements	Net
Rothenberg v Papavero et al.	\$650.00	\$ 31.85	\$ 283.15
Aronson v Hermanco Hotel Corp	No Judicial Statement of said case.		
Doyle v N.Y.C.T.Authority	200.00	7.50	92.50
Crawford v Natrock Rest.Inc.	225.00	13.00	99.50
Cuozzi v Weldon Realty Corp.	300.00	16.00	134.00
Maack v Wysoki	500.00	31.00	204.78
Attardi v Applebaum	225.00	10.00	98.75
Trela v City of New York	350.00	31.00	154.00
Kayne v N.Y.C.T.Authority	500.00	15.00	235.00
Maack v Waxman et al.	400.00	26.50	174.50
Venturella v A-Art Linnen Sup.	150.00	12.00	63.00
Kucien v East Coast Transfer	1000.00	41.00	459.00
Trela v Woronowitz et al.	4500.00	170.00	1000.00
Total Receipts of clients	\$ 9000.00	\$404.85	\$2998.18

Cases listed by agent no closing statement
to account for said cases.

Kayne v Motor Vehicle A.I.Corp.	0	0	\$1020.00
Jerebet v M.Vehicle A.I.Corp	0	0	433.00
Caparino v Pina	0	0	125.00
Cohen v Hyde Realty Corp & Barr	0	0	112.50
			\$1670.50

N.Y.State Pay(wages)	\$ 13,715.01
Insurance premiums clients	1,858.17
Dividends deposited	5,258.00
Interest savings accounts	142.04
Escrow deposited for refund	800.00
Loan Refund(Murray Sorrell)	1000.00
Exchanged for checks	437.57
Sales of stock	51,196.22
Total deposits	\$74,403.01

Recapitulation:	
Clients funds	9,000.00
Miscellaneous Deposits	\$74,403.01
Total deposits	\$83,403.01

Respectfully submitted

FRANK L.SILVERMAN

Exhibit "1E"

Name of Case	Gross Receipts	Additional Business Ded.	Net
Vaszlavik v Weder et al.	\$ 257.50	\$ 15.00	
Cuozzi v Esport Realty	175.00	25.00	
Mortellaro v 336 Ass.Inc.	212.50	82.99	
Gomez v Sabron Realty Corp.	198.00	26.00	
Diller v 1280-A Ass.Inc.	200.00	21.00	
Trela v Kiely et al.	3476.50	601.50	
Skinner v NYC.Transit	75.00	20.00	
Hadzinsky v Ave.B & E'PWay	3000.00	64.00	
Dento Mets & Feinman	400.00	24.00	
Kaufman v 274 E.7th St.	225.00	27.00	
Davidson v Feingold	225.00	21.85	
Gelbert v 182-4 Second	225.00	10.00	
Cohen v Atlas Barber Sch.	225.00	32.50	
Seeman v Sini Holding Corp	250.00	10.00	
Matracht 1082-20 E'Pkway	275.00	15.00	
Bylan v Pearlmax	250.00	15.00	
Finkenthal v Italia So	500.00	25.00	
Klein v Dry Dock Savings	112.50	17.00	
Eisenstein v I.E.Holding	125.00	25.00	
Bingham v Roman	367.50	71.50	
Green v Nigro	175.00	20.00	
Zucker v Celtic	121.00	10.00	
Kornblau vParade Dress	100.00	2.00	
Drelinger v M.Silverman	450.00	25.00	
Friedland v Valen Operating	200.00	10.00	
Eng v Rubin Equities,Inc.	742.50	113.00	
Nylan v Schulman & Green	688.60	146.10	
	\$ 13301.60	\$ 1475.44	\$11826.16

(DKT NO.3506-68)
(EXH.19-S)
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RE: Frank L. Silverman
Professional Income 1962

Name of Case	Gross Receipts	Additional Business Ded.	Net
Boruta v Medina	\$ 250.00	\$ 48.00	
Bidawick v Rosenwasser	215.00	80.00	
Bomser v Surface Transit	558.34	20.00	
Zeman v NYC Transit	300.00	7.00	
Tirado v Nu-Land Ass'n	1877.26	479.76	
Ramos v Rosenberg	250.00	15.00	
Adams v 274 E. 7th St.	150.00	13.00	
Sochis v NYC Transit	250.00	22.00	
Lasky v Schiff	187.50	21.00	
Cuoizzi v Weiss	187.50	26.00	
Torres v Costillo	750.00	85.50	
Mostofsky v City of N.Y.	777.10	128.50	
Kallao v McCray et al	5032.10	1373.85	
Blyan v Pearlmax	186.87	12.50	
Haber v Haber Realty	200.00	10.00	
Cooperberg v Hockweiss	250.00	73.75	
	<u>\$11421.67</u>	<u>\$2417.36</u>	<u>\$9004.31</u>

RE: Frank L. Silverman
Professional Income 1963

Name of Case	Gross Receipts	Additional Business Ded.	Net.
Gold v Ventura	\$228.50	\$ 74.00	
Kanye v Wooten	1772.38	122.38	
Saporita et al.	426.00	60.00	
Grumet v City of N.Y.	970.87	191.75	
Matracht v Federation	240.00	30.00	
Enculescu v Joson Realty	875.00	55.60	
Konofsky v Lowenthal	500.00	25.00	
Matracht v 1080-20	250.00	20.00	
Birkenfeld v Klein	600.00	10.00	
Drelich v Lestz	350.00	30.00	
Friedland v Objer	161.00	36.00	
Bass v Klein	350.00	15.00	
Seltzer Esport Realty	206.00	54.50	
De Luca v 1280 Sheridan	500.00	25.00	
Castro v Reissfeld	1594.40	708.96	
Katz v N.Y.C. Transit	75.00	14.00	
Penley v Horn & H.	250.00	35.00	
Katz v N Y C Transit	100.00	19.00	
Sanchez v Canter	436.00	100.00	
Piela v City of N.Y.	450.00	47.00	
Seeman v Kellner	200.00	0	
	<u>\$10535.75</u>	<u>\$1673.19</u>	<u>\$8862.56</u>

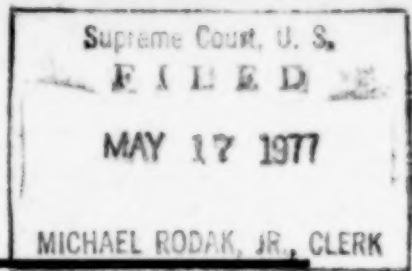
RE: Frank L. Silverman
Professional Income 1964

Name of Case	Gross Receipts	Additional Business Ded.	Net
Kogan v Kayland Pro.	\$ 75.00	\$ 27.00	
Prince v C.of N.Y.	304.24	99.74	
Kayne v Waxman	600.00	36.52	
Lvovsky v C of N.Y.	300.00	200.00	
Gambino v Solire Service	133.33	25.00	
Drelinger v Roberta Ser.	125.00	25.00	
Richman v NYC Transit	75.00	20.00	
Turk v The Candy Rock	150.00	10.00	
Cohen v Blue Rose	200.00	18.00	
Drellich v Public Service	300.00	15.00	
Bass v Lapidus	125.00	10.00	
Bochner v Longo	350.00	19.00	
Flax v NYCH etal.	795.00	95.00	
	<u>\$3532.57</u>	<u>\$600.26</u>	<u>\$2932.31</u>

RE: Frank L. Silverman
Professional Income 1965

Name of Case	Gross Receipts	Additional Business Ded.	Net
Rothenberg v Papavero	\$ 410.70	\$ 117.55	
Aronson v Hermanco	112.50	10.00	
Crawford v Nutrock Rest.	112.50	13.00	
Doyle v NYC.Transit	100.00	7.50	
Cuoizzi v Weldon Realty	150.00	16.00	
Maack v Wysoki	295.00	90.45	
Attardi v Applebaum	116.25	17.50	
Trela v C.of N.Y.	195.00	51.00	
Kayne v NYC.Transit	250.00	15.00	
Veturella v A Art Linen	75.00	12.00	
Maack v Wyman etal	200.00	26.50	
Lucien v East Coast	500.00	41.00	
Kayne v Motor Vehicle	1120.00	91.50	
Jerebker v Motor Vehicle	433.00	91.50	
Capriano v Pina	125.00	12.00	
Cohen v Hydrie Realty	112.50	10.00	
	<u>\$4307.67</u>	<u>\$622.50</u>	<u>\$3685.17</u>

No. 76-1293



In the Supreme Court of the United States

OCTOBER TERM, 1976

FRANK L. SILVERMAN, ET UX., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT*

**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

WADE H. MCCREE, JR.,
*Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1293

FRANK L. SILVERMAN, ET UX., PETITIONERS

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*ON PETITION FOR A WRIT OF CERTIORARI TO
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**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

Petitioners contend that they were not bound to the terms of stipulations agreeing to the assessment of liabilities because they claim that they entered into those stipulations under duress.

Petitioner¹ filed petitions in the Tax Court seeking redeterminations of deficiencies and fraud penalties totaling \$197,927.42 for the years 1960-1965 (R. A-8, A-60, A-131). He alleged, *inter alia*, that the deficiencies were barred by the statute of limitations and that they had been

¹"Petitioner" refers to Frank L. Silverman. Anna Silverman was a party to the proceedings below by virtue of having filed joint returns with petitioner for the years 1963-1965 (R. A-104 to A-105, A-114, A-121). Fraud penalties were not asserted against her (R. A-131). "R." refers to the record appendix filed in the court of appeals.

improperly computed (R. A-12, A-14, A-67, A-69, A-138 to A-139, A-141). The Commissioner responded that petitioner had failed to produce adequate books and records from which his liabilities could be determined, that the liabilities had been correctly determined by the bank deposits method, and that petitioner had been convicted of filing fraudulent income tax returns for the years 1961-1965, in violation of 26 U.S.C. 7201 (R. A-24, A-82 to A-84, A-155 to A-159, A-160).² In response to petitioner's numerous motions seeking more detailed information concerning how the liabilities were computed, the Commissioner filed amended answers (R. A-40, A-93 to A-103, A-167 to A-179). By June 13, 1973, the Commissioner had turned over to petitioner all of the material that he had concerning his computations of the deficiencies (R. A-343 to A-344). Although the Tax Court granted petitioner a series of continuances, efforts to stipulate undisputed facts failed.

When the case was called for trial on June 21, 1976, the issues had not been narrowed. The Commissioner presented schedules reflecting adjustments of the liabilities based upon documents petitioner had submitted to the Service, and petitioner was given an opportunity to challenge the items included in the schedules and to present other items. After four days of proceedings during which the parties made concessions and settled some issues, petitioner indicated a willingness to stipulate to the tax liabilities and penalties. However, petitioner thereafter declined to sign a stipulation that had been prepared with respect to one of the years (R. A-684 to A-687). The Tax Court scheduled the trial of disputed issues the next day (R. A-689). Petitioner then announced that he had decided to enter into stipulations rather

²See *United States v. Silverman*, 311 F. Supp. 485 (S.D. N.Y.), affirmed, 449 F. 2d 1341 (C.A. 2), certiorari denied, 405 U.S. 918.

than present his evidence, and he asked for a mistrial (R. A-693 to A-694). The Tax Court denied petitioner's oral motion for a mistrial and directed him to present his evidence (R. A-695, A-699). Petitioner requested a further continuance (R. A-698). Proceedings resumed eleven days later, at which time petitioner presented a few items of evidence and then stated that he wished to stipulate to the liabilities (R. A-734 to A-735).

After the Tax Court entered decisions in the total amount of \$100,085.68, based upon the stipulations, petitioner filed a motion to vacate the decisions on the ground that he had entered into the stipulations under duress (R. A-298 to A-318). The Tax Court denied the motion (Pet. App. 55), and the court of appeals affirmed (Pet. App. 46-48).

1. Petitioner renews his argument (Pet. 24-25, 38-39) that he entered into the stipulations under duress because the Tax Court forced him to sign the stipulations. While the Tax Court encouraged petitioner to settle his tax liabilities rather than litigate them, it clearly advised petitioner that he could choose instead to present his evidence at trial (R. A-671, A-688). Contrary to petitioner's argument, the Tax Court's statement that he would be called upon to present his evidence, if he chose to go to trial, hardly constitutes an improper threat; petitioner, after all, had the burden of proof with respect to liability. Tax Court Rules of Practice, Rule 142(a).³ Especially, since petitioner is an attorney of many years' experience, the Tax Court's statement fell far short of duress. See *Krueger v. Commissioner*, 48 T.C. 824, 832; *Stanley v. Commissioner*, 45 T.C. 555, 561-562.

At all events, the Tax Court gave petitioner a full opportunity to prepare for trial and to present evidence.

³With respect to the issue of fraud the government had the burden of proof. See Tax Court Rules of Practice, Rule 142(b).

Petitioner sought and was granted five continuances and he filed approximately six motions seeking detailed information concerning the computations of the deficiencies (see docket entries). As a result of these delays, the trial was deferred approximately three and a half years—from December 11, 1972, the date on which the last of the petitions was filed, to July 7, 1976, the date on which petitioner decided to enter the stipulations rather than proceed with trial (see docket entries). Since the Commissioner had early in the proceedings turned over to petitioner all of the information that he had concerning the computation of the deficiencies (R. A-343 to A-344), the case was deferred for approximately three years after petitioner obtained possession of all of the pertinent information concerning the Service's position.

2. Petitioner further contends (Pet. 22-24, 27, 35-36, 38) that he was in a "state of shock" at the time he signed the stipulations and that the stipulations failed to reflect agreed adjustments for amounts he distributed to clients. But petitioner offered nothing other than his self-serving statement (R. A-305) that he was near collapse from exhaustion in support of his contention that he was in a state of shock. The stipulations, however, were entered after an 11-day recess in the presence of the Tax Court, which was in a position to determine whether petitioner was able to make a reasoned decision. In these circumstances, the Tax Court did not abuse its discretion in rejecting petitioner's unsupported assertion.⁴

⁴Petitioner's remaining contentions are likewise without merit. While he attacks (Pet. 20-21) the Tax Court's denial of his numerous motions for discovery, the Commissioner made available to petitioner all of the information which he had concerning the liabilities. Moreover, contrary to petitioner's argument (Pet. 28), the assessments here were not barred by the statute of limitations. In the case of a false or fraudulent return the tax may be assessed at any time. See Section 6501(c) of the Code. Finally, contrary to petitioner's suggestion (Pet. 37-38), there is no

It therefore is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1977.

requirement that the Commissioner assess a civil tax liability no greater than that set forth in an indictment for the same taxable year charging tax evasion under 26 U.S.C. 7201. The purpose of the civil assessment is to collect the full amount of taxes due, whereas the purpose of the allegation in a criminal indictment is to state the amount of income that was unreported due to fraud. See 10 Mertens, *Law of Federal Income Taxation*, §55.18, p. 109 (Doheny rev. 1976).

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

Supreme Court, U. S.

FILED

MAY 24 1977

MICHAEL RODAK, JR., CLERK

NO. 76-1293

FRANK L. SILVERMAN, ET UX.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

PETITIONERS REPLY

FRANK L. SILVERMAN
COUNSEL PRO SE
Attorney for Petitioners
258 Broadway
New York, N.Y. 10007
(212) 267-2760

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1976.

NO. 76-1293

FRANK L. SILVERMAN, ET UX.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

In reply of the petitioners to the respondent's memorandum in opposition to the writ, the following facts are respectfully submitted by the petitioners for the Court attention and consideration.

The minutes of July 7, 1976, in the Tax Court, page A-727, lines 3 to 7:-

" I can't take any longer. I'm kind of dizzy now. Can I have some water, please?
The Court? - Well, I'll tell you, Mr. Silverman, that as of now, you are not prepared to proceed

(1)

any further, is that right?"

The Court knew at that time that the petitioner was in a state of shock and was unable to proceed and yet the said Tax Court directed the petitioner to sign a stipulation upon which this writ is respectfully directed.

The Commissioner turned over in excess of 1000 exhibits at or before the 24th day of February, 1976, on the eve of trial.

The transcript of the minutes of February 24, 1976, in the Tax Court is herewith submitted, page A-369 as follows:-

Mr. Silverman: I would like to make a specific and pointed request of the Court. I received all these papers, if your honor will notice on the desk, late last week, and it's physically impossible to give them a thorough examination to shift-- pick out what's important-- what isn't important, so perhaps after I look at those papers, Mr. Brodsky and I can go into a further stipulation, taking away much lost time from the Court and from ourselves. For this reason, your honor, at this time, I'm going to ask for a continuance of this case, for a reasonable time.."

Even on said date the Commissioner submitted additional exhibits to the Tax Court without first furnishing copies to petitioners.

(2)

The Tax Court's denial of the motions for the bills of particulars and the discovery and inspection motion was tantamount to a denial of due process to the petitioners in this case.

That in addition to the above, the Commissioner submitted to the Tax Court new and different schedules than the schedules of the tax deficiencies, or in the amended answers.

In the record on appeal (A-402 lines 1-25) Revenue Agent, Calvin Wallace, testified;

" The bank deposit is -- the--our analysis of the bank accounts is new. Continuing;
How about the major unexplained deposits?
That was new too. The unexplained deposit schedules were new".

That in view of what transpired in the Tax Court, June 24, 1976, and in view of the Court's pronouncement made by the same Judge, September 22, 1975, (R.A-350, lines 23-25) petitioners respectfully requested a mistrial.

" THE COURT: -- same thing before. And that's why I don't want to try your case, frankly, because I'd be the first to admit, I'd have a hard time being patient".

The petitioners request for a mistrial was denied by the Tax Court. The Court continued the case to July 7, 1976, on its own motion.

The Commissioner in his memorandum in opposition to the petitioners' writ fails to indicate that between June 25, 1976 to July 7, 1976, there are eleven days, and that on July 7, 1976, the petitioner became ill and was in a state of collapse and in shock. Even the Tax Court noticed that the petitioner was ill by making the following comment:- (R.A.727 lines 3 -7)

" By the Court:- Well as of now, I'll tell you Mr. Silverman, that as of now, you are not prepared to proceed any further, is that right?.

The Tax Court did not afford petitioners an adequate opportunity by denying petitioners a bill of particulars and the discovery and inspection motion so as properly prepare for trial and meet the issues in this tax case .

Petitioners submitted to the Tax Court Court schedules of cases indicating the payments made to clients See pages 56 to 66 exhibits 1A-A-B-C-D-1E. of Petition.

which were not credited to the petitioners of the Commissioner's schedules.

The petitioner upon regaining his well being immediately made an application before the Tax Court, pursuant to Rule 161 and 162 of the United States Tax Court Rules with respect to the omissions in the schedules of funds that were paid out to clients, that motion too was denied by the Tax Court, without any opposing papers having been submitted by the Commissioner. (See page 55 exhibit "F" of the petitioners' petition).

For all of the foregoing reasons and in the interest of justice ,it is respectfully urged upon this Court to grant petitioners Writ of Certiorari in this matter.

RESPECTFULLY SUBMITTED

FRANK L. SILVERMAN
Attorney for Petitioners
and Pro Se.
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(212) 267-2760